

# ARKANSAS COURT OF APPEALS

DIVISION III

No. CA 08-198

JAY ELMORE STALTER and  
CHARLOTTE DARLENE STALTER  
APPELLANTS

V.

JIMMY A. GIBSON and  
DIANNE GIBSON  
APPELLEES

**Opinion Delivered** September 17, 2008

APPEAL FROM THE VAN BUREN  
COUNTY CIRCUIT COURT,  
[NO. CV-2006-98]

HONORABLE CHARLES EDWARD  
CLAWSON JR, JUDGE

REVERSED AND REMANDED

**EUGENE HUNT, Judge**

Appellants appeal the decision of the Van Buren County Circuit Court which granted appellees's motion for summary judgment. On appeal, appellants argue: (1) that appellees are barred from claiming that an alleged oral agreement entered into before the signing of the written Contract for Sale of Real Estate, and which varies the terms of the contract, is valid; (2) that the trial court erred in holding that the deed signed by them that omitted a reservation of one-half of the minerals was a separate contract, and not an implementation of the contract of June 9, 1992; and (3) that they are entitled to reformation of the warranty deed to reserve a one-half interest in the oil, gas, and other minerals in the property. There are genuine issues of material fact, and the movant is not entitled to summary judgment as a matter of law. We reverse and remand for a trial on the merits.

Appellants and appellees signed an agreement on June 9, 1992, for the sale of the land in this litigation wherein appellants reserved a one-half interest in the oil, gas, and minerals. The contract also provided that appellees would receive one-half of any oil and gas lease proceeds upon the payment of \$35,000. Appellants prepared a warranty deed on June 9, 1992, mirroring the provisions of the agreement and placed such deed in escrow at Heber Springs State Bank.

After appellees satisfied the contract, the deed that appellants had prepared in 1992 apparently was lost. Appellants then had a second deed prepared that named Cleburne County rather than Van Buren County as the location of the land. The names of the purchasers were misspelled. This deed was filed of record on August 23, 2004. Appellants were subsequently notified of the mistake and asked appellees to prepare a corrected deed. Appellees prepared a corrected deed which also contained the wrong county. Appellees then prepared a second corrected deed which was recorded on November 10, 2004. The deeds prepared by appellees did not contain a reservation clause in favor of appellants.

Appellants contacted appellees sometime after the November 10, 2004, deed and asked appellees to sign a mineral deed conveying an undivided one-half interest in the oil, gas and minerals to them. Appellees refused, and appellants filed suit on May 9, 2006, to have the deed reformed. Appellees filed their answer on June 2, 2006. Appellees filed a motion for summary judgment on July 25, 2007. Appellants filed a cross-motion for summary judgment on September 21, 2007. A hearing on the motions was held on September 27, 2007. The

trial court granted appellees's motion for summary judgment on November 9, 2007. Appellants filed notice of appeal on November 26, 2007.

*Standard of Review*

Summary judgment is proper where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *See Nelms v. Martin*, 100 Ark. App. 24, \_\_\_ S.W.3d \_\_\_ (2007). On appeal, we need only decide if summary judgment was appropriate based on whether the evidentiary items presented by the moving party in support of the motion left a material question of fact unanswered. *Id.* This court views the evidence in the light most favorable to the party against whom the motion was filed, resolving all doubts and inferences against the moving party. *Pakay v. Davis*, 367 Ark. 421, 241 S.W.3d 257 (2006). The standard is whether the evidence is sufficient to raise a fact issue, not whether the evidence is sufficient to compel a conclusion. *Wagner v. General Motors Corp.*, 370 Ark. 268, \_\_\_ S.W.3d. \_\_\_ (2007).

The intent of the parties at the time the deed was signed was in dispute. Resolution of the conflict depended on which version of the facts was to be believed. Issues of credibility are to be resolved by the fact-finder. *Omni Holding & Dev. Corp. v. C.A.G. Invs., Inc.*, 370 Ark. 220, \_\_\_ S.W.3d \_\_\_ (2007). The trial court erred in granting summary judgment as there were genuine issues of material fact that remained unresolved. Because we decide that summary judgment was not proper, we decline to address the appellants's arguments.

Reversed and remanded.

HART and GRIFFEN, JJ., agree.